Information Commissioner's Office

Promoting public access to official information and protecting your personal information

# Managing sickness absence - policy and procedure

**Contents**


**1. Introduction** ..... 3

**2. Policy aim** ..... 3

**3. General guidance** ..... 3

**4. General responsibilities** ..... 4
4.1 Managers ..... 4
4.2 Employees ..... 4
4.3 Human Resources Team ..... 4

**5. The right to be accompanied** ..... 5

**6. Trade union representatives** ..... 5

**7. Attendance and ill health** ..... 5
7.1 General considerations ..... 5
7.2 Notification of sickness absence ..... 6
7.3 Implications for holiday pay when off work due to sickness ..... 7

**8. Medical suspension** ..... 7

**9. The process for dealing with frequent and persistent short-term absence** ..... 9
9.4 Return to work meetings ..... 9
9.8 The Formal Process ..... 10
9.9 Formal process - Stage 1 ..... 10
9.11 Formal process - Stage 2 ..... 12
9.13 Formal process - Stage 3 ..... 13
9.17 Formal process - Stage 4 ..... 13

**10. Deciding on the outcome of formal action** ..... 14
10.4 First written warning (Stage 2**)** ..... 15
10.7 Final written warning (Stage 3) ..... 15
10.9 Dismissal (Stage 4) ..... 16

**11. Right of appeal** ..... 17

**12. Dealing with long-term sickness absence** ..... 17

**13. Retirement on the grounds of ill health** ..... 19

**14. Date of operation** ..... 20

**Appendices 1 – 12** ..... 21 - 34

## 1. Introduction

1.1 At the Information Commissioner's Office (ICO) we expect all our employees to achieve a satisfactory level of attendance. It is important, therefore, that we all understand our obligations and rights in this regard.

We are committed to encouraging good employee attendance levels and we will deal sensitively, consistently and constructively with all employees.

1.2 This procedure applies to all ICO employees at all levels.

## 2. Policy aim

2.1 The aim of this policy is to:

i. identify the standards of attendance expected;
ii. make sure that absence is managed in a fair, sensitive, appropriate and consistent way;
iii. outline the approach that managers should take when dealing with long and short-term absence; and
iv. provide practical support and encouragement to bring about any necessary improvements in attendance.

2.2 This policy is not intended to force you to attend work when you are unfit to do so. It is important, however, that everyone recognises their personal responsibility to achieve an acceptable level of attendance.

## 3. General guidance

3.1 This procedure applies to:

i. uncertified or certified short-term sickness absence; and
ii. long-term absence due to ill health.

3.2 We will deal with issues relating to your conduct under the ICO's disciplinary procedure. The following are examples of issues that would normally be dealt with under the disciplinary procedure.

i. Failure to follow workplace procedures in reporting sickness absence (see section 7.2).
ii. Where absence forms a repeated pattern, such as days off before and/or after weekends / bank holidays.
iii. Where there is evidence that you are not actually ill.

## 4 General responsibilities

4.1 Managers

i. Managers are responsible for monitoring absence within their team, conducting return to work meetings with members of their team following any period of absence and taking appropriate action to manage absence levels within their team.

ii. Where the level of your attendance is considered to be unsatisfactory, your line manager must review the situation with you and provide support as appropriate. Line managers must also set review dates and monitor progress accordingly.

iii. Line managers may issue formal warnings but where there is a possibility that the outcome of the formal action will be dismissal, a manager at the level of Assistant Commissioner or above must chair the formal hearing.

4.2 Employees

Employees should make every effort to ensure that their level of attendance meets the required standard and, where appropriate, take advantage of any support identified (such as attending occupational health appointments) to ensure satisfactory attendance.

4.3 Human Resources Team

i. The Human Resources (HR) Team is responsible for ensuring that staff and managers are provided with advice and guidance on the use of these procedures. When dealing with absence issues, line managers should speak to the HR Team at the earliest opportunity. This will help to ensure that each case is dealt with correctly and will also ensure that all employees are treated fairly and consistently across the ICO.

ii. There may be occasions where you ask for someone from the HR Team to be involved in an absence issue when your line manager has not requested someone from HR to attend. If this occurs it is not the role of the HR Team member to act as a representative for you.

iii. A member of the HR Team will be available to advise in all formal stages of the procedures set out in this document, and must be involved in absence hearings from Stage 2 of this procedure onwards.

iv. To ensure that all managers and trade union (TU) representatives operate the procedure in an appropriate and agreed manner, the HR

Team will organise regular joint training sessions on how to handle absence issues.

## 5 The right to be accompanied

5.1 The formal stages of this procedure are set out in Stages 1, 2, 3 and 4 and do not include return to work meetings.

You have the right to be accompanied at any **formal** stages of the procedure by either a TU representative or full-time official of a recognised trade union, or by an ICO colleague. You have no right under this procedure to be accompanied by anyone else such as a family member, friend or legal representative.

5.2 The only exceptions to this rule are:
i) where you have been absent due to long-term ill health and your ill-health retirement is being considered, in which case you may need the support of a family member, friend or medical practitioner; or
ii) where it would be a reasonable adjustment under the Disability Discrimination Act to allow appropriate external support.

## 6 Trade union representatives

6.1 Formal action against a Trade Union representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal standards apply to their attendance as employees, the relevant full-time official must be notified of any action that is proposed (including suspension).

6.2 In any event, formal action must not be taken against a Trade Union representative until the relevant full-time official has had an opportunity to be present at the formal meeting.

## 7 Attendance and ill health

7.1 General considerations

i. There may be various factors both within and outside the workplace that can affect your health and wellbeing. We offer a range of services within the ICO including occupational health support, counselling and physiotherapy.

The ICO may only be able to provide these facilities following a review by Occupational Health and if they are unavailable from the NHS within a reasonable timescale. This may require confirmation from your GP.

ii. Each particular case must be judged on its merits, involving Occupational Health when appropriate. We will provide managers with training and guidance so that they can deal with these issues appropriately.

iii. We will only use the formal stages of this policy in situations where either the frequency or the duration of your sickness absence is an issue.

iv. Line managers may find it helpful to keep secure records showing the duration and reasons for all periods of sickness absence. These records will allow managers to monitor sickness absence levels and enable problems to be addressed at an early stage. These records will be supported by information sent to line managers by the HR Team.

v. Pregnancy-related sickness will be recorded in the normal way but no formal action should be taken in respect of pregnancy-related absence. It may be necessary for the ICO to obtain information from a GP or Occupational Health to ascertain the likely duration and/or frequency of absences.

vi. Disability-related absence must be managed in a way that does not breach the Disability Discrimination Act 1995. Line managers must get advice from HR when dealing with disability-related absence.

vii. If you choose to have elective surgery where there is no pressing medical need, for example cosmetic surgery, you must take annual leave for the duration of the absence. In the event that further time off is required for recuperation, only Statutory Sick Pay (SSP) will be paid to you during the absence.

7.2 Notification of sickness absence

i. You must follow the ICO's procedures regarding the notification of sickness absence, which means that you must contact your line manager before 10am on the first day of absence, and give them an indication of how long you expect to be absent.

ii. You should stay in regular contact with your line manager while you are absent from work. You must ensure that you speak with your line manager in person and not communicate by email, text or by leaving a message on an answer phone. If you can not reach your line manager you must contact your manager's manager or, in their absence, HR.

iii. For sickness absence spells of up to 7 calendar days (including weekends), you must provide a self-certification form (see Appendix

2). For absence spells which last for more than 7 days, you must provide a certified sick note from a doctor.

iv. You must make sure that any certified absence (in other words, doctor's notes) run consecutively. If you do not provide consecutive medical certificates, your absence may be recorded as unauthorised and you may not be paid for the period not covered. You may also face disciplinary action.

v. If you have a doctor's note which is for more than one week, you must make sure that you obtain a 'signing off' note before to returning to work. A signing off note is simply a sick note that specifies a date on which you are fit to return to work rather than a period of time for which you should refrain from work. If you are unsure whether or not you need a signing off note you should contact HR.

7.3 Implications for holiday pay when off work due to sickness

i. If you are off sick and unable to take your full leave entitlement, you may be able to carry over a maximum of nine days untaken annual leave into the next leave year, in line with normal carryover arrangements.

ii. If you are absent for longer than 12 months, you will not accrue any annual leave during the period of absence.

iii. If you want to take annual leave while you are absent due to sickness, we may ask you to obtain permission from your doctor and provide us with confirmation that the holiday will not be harmful to your recovery. This will then be treated as annual leave for the duration of your holiday period. You will be expected to follow the usual departmental arrangements for booking annual leave with your manager.

iv. If you fall sick during your annual leave, you will be treated as being on sick leave from the date of a doctor's statement and re-credited with annual leave. Self-certification will not be enough.

## 8 Medical suspension

8.1 If you attend work and your line manager has a genuine concern about your state of health, he or she may decide to medically suspend you from duty.

The decision to suspend would be taken as a last resort, and only after your manager has advised you of their concerns and asked that you get medical advice and sickness certification.

8.2 If you refuse, your line manager can decide to suspend you on medical grounds, usually after discussion with the HR Team, and after the following issues have been fully considered.

- The severity of your health problem.
- The possible effects on your own work if you continue on duty.
- The possible effects on customers, other employees and so on.

8.3 During medical suspension you will receive your normal pay in line with your planned working arrangement.

8.4 If your line manager decides to suspend you, they should advise you of the following.

i. You should contact your TU representative; if appropriate (the manager should also ensure that any TU representative you have identified is informed at the earliest opportunity).

ii. You must remain contactable and available during normal core hours so that you can attend meetings as required.

iii. You must notify us immediately if you change address or telephone number during the period of suspension.

8.5 We will write to you to confirm and summarise the reasons why you have been suspended.

8.6 Your line manager and the HR Team will review your suspension every 10 working days and confirm the outcome of the review in writing.

8.7 As an alternative to suspension your line manager may consider limiting your duties, or temporarily transferring you to another area of work, bearing in mind the nature of your health problem.

8.8 Having suspended you, your line manager must refer you immediately to Occupational Health to arrange a medical assessment. This may be on the basis of obtaining a first or second opinion from a medical practitioner on your fitness to work.

8.9 Your suspension will end when you have been given medical clearance to return to work.

8.10 All ICO employees have a contractual obligation, whilst on medical suspension, to attend a medical examination on request. If you refuse this request, you will be informed that you need to provide the ICO with an appropriate medical assessment as evidence that you are fit to return to work. However, this does not mean that we cannot seek a second opinion

from Occupational Health. If you continue to refuse to provide an appropriate medical assessment, we will base our decisions on your continuing employment on the information we have available.

## 9 The process for dealing with short-term absences

9.1 Whenever possible, an informal approach will be the first step to help, guide or advise you about improving your attendance. This may take place in return to work meetings or in separate informal meetings arranged by your manager.

9.2 The purpose of any informal meeting between you and your line manager is to identify and examine any areas of concern, and to make sure that your clearly understand our future expectations.

9.3 Your line manager should keep a note of any meetings (such as a diary note), but other than the self-certification and return to work meeting form, no record or details of the meeting will be kept on your personnel file.

9.4 Return to work meetings

Following **any** period of sickness absence, your line manager should meet with you to:

- welcome you back to work;
- ask how you are and discuss the reason for your sickness absence (N.B. you will be referred to occupational health if you have been absent for a stress related reason);
- discuss, if appropriate, whether your absence was due to any underlying or long-term health problem;
- discuss, if appropriate, whether your absence was work-related and whether we could make any adjustments to help you;
- discuss, if appropriate, whether we can provide any assistance or support to allow you to continue to attend work; and
- update you about any relevant matters that may have occurred while you were absent.

9.5 If you have been absent for a reason which you are uncomfortable speaking with your manager about in a return to work meeting, you should

contact HR for advice. It may be possible to arrange for you to meet with another manager.

9.6 Return to work meetings should take place as soon as possible following your return from absence. Unless not practical due to sickness, leave or pre-arranged business reasons, they should occur within 2 days of your return. If your manager is away from the office for a substantial period of time, you can request to have a meeting with a different manager.

9.7 Details must be recorded on the self-certification and return to work meeting form (Appendix 2) and you and your line manager may keep a copy for future reference. Your line manager will send a copy to HR to go on your personnel file.

9.8 **The formal process**

It is essential that we deal with frequent and persistent absence promptly, firmly and consistently to demonstrate to all employees that we regard absence as a serious matter.

If you are frequently and persistently absent, the following procedure will make that we take appropriate action.

9.9 **Formal process - Stage 1**

**As part of our sickness monitoring arrangements, managers will instigate the formal process and arrange to meet with any employee who has had three periods of sickness absence in the last 6 months, or absence totalling 10 working days or more, within the last 12 months.**

Managers will always arrange to have a Stage 1 meeting with anyone who has hit the sickness absence trigger points. The meeting will allow your manager to consider if it is appropriate to issue you with a verbal warning regarding your attendance.

Your manager should write to you to confirm that a Stage 1 meeting will take place. A sample letter can be found at Appendix 3.

9.10 The meeting should take place within 10 days of your return to work interview unless this is not reasonably practicable.

An appropriate member of the HR Team may also attend the meeting, at which the following points should be covered.

i. A review of your attendance record over the last 12 months and the reasons for your sickness absences.

ii. An opportunity to discuss whether these sickness absences are part of any underlying health problem.

iii. Discussion about whether you have asked for or received any support, for example, from your GP, hospital doctor, etc.

iv. Discussion about whether any sickness problem may be work related and, with HR, identify and agree whether any adjustments could be made.

v. If appropriate, you will be informed that you will be referred to Occupational Health to establish your current state of health. This will be to establish the underlying reasons (if any) for your absence, whether the reasons are work-related and the impact of any underlying condition on your ability to attend work.

   An Occupational Health appointment will be arranged for you. At this appointment, you will be asked to agree to Occupational Health contacting your GP/consultant, if appropriate.

vi. Ways of achieving and maintaining an improvement in your attendance will be explored, which may include identifying a target for improved attendance over a 12-month review period.

vii. Where a verbal warning is issued, this reflects that the ICO trigger point has been reached and in no way implies that the periods of sickness absence are not considered to be genuine. The issue of a verbal warning will be confirmed in writing and will remain live for a period of 12 months from the date of issue. A sample of a verbal warning letter can be found at Appendix 4, a copy of the letter will be sent to HR and kept on your personnel file.

viii. It may not be appropriate to issue a verbal warning in all circumstances. Although managers have the discretion to handle matters on a case-by-case basis, they should seek advice from HR in these circumstances to ensure fairness and consistency of approach across the organisation.

ix. Regardless of the outcome of the meeting, your manager should inform you that any further absence during the review period may lead to further action being taken under the procedure. You will receive a letter confirming the outcome of this meeting.

x. If you are not issued with verbal warning your line manager will inform you of their expectations for improvements in attendance. Failure to improve attendance sufficiently is likely to result in a verbal warning being issued.

9.11 **Formal process - Stage 2**

**If your attendance does not improve sufficiently following Stage 1, we will continue to the next stage of the procedure. At the conclusion of Stage 2 of the procedure you may be issued with a first written warning.**

Your manager should write to you to confirm that a Stage 2 meeting will take place. A sample letter can be found at Appendix 5.

9.12 The following procedure will ensure that we take the appropriate action.

i. If appropriate, your line manager will liaise with HR to refer you to Occupational Health. The Occupational Health report will be discussed in the Stage 2 meeting (if applicable).

ii. If this medical opinion confirms that you have an underlying medical condition, your line manager should make sure that Occupational Health recommendations are followed and that you receive sufficient support. You should be informed that your attendance will continue to be monitored. The existence of an underlying medical condition does not preclude a first written warning being issued if attendance continues to be unsatisfactory.

iii. If the medical opinion confirms that there is no underlying or substantial health reason for your absences, or if there has been insufficient improvement in your attendance since the Stage 1 warning was issued, you may be given a **first written warning**, as described in sections 10.4 to 10.6. A sample first written warning letter can be found at Appendix 6. A copy of the warning letter must be sent to HR and a copy will be kept on your personnel file.

iv. If, at the end of the 12-month review period allowed for improvement, you have reached the required standard of attendance, your line manager will inform you, in writing, that no further action will be taken.

v. If your attendance continues to be unsatisfactory, we will move on to Stage 3 of this procedure.

9.13 **Formal process - Stage 3**

**If your attendance does not improve sufficiently following Stage 2, we will progress to the next stages of the procedure. At the conclusion of Stage 3 of the procedure you may be issued with a final written warning as set out in sections 10.7 to 10.8.**

Your manager should write to you to confirm that a Stage 3 meeting will take place. A sample letter can be found at Appendix 7.

9.14 If it is found that your attendance has not reached the required standards you may be issued with a final written warning. A sample final written warning letter can be found at Appendix 8. A copy of this letter will be sent to HR, and the warning will remain live for 12 months.

9.15 If, at the end of the period allowed for improvement, you have reached the required standard of attendance, your line manager will inform you, in writing, that no further action will be taken. However, if you have further absences, your manager will refer you to the final stage of the policy.

9.16 If your attendance continues to be unsatisfactory and we are considering your dismissal, your attendance record will be examined and a further formal meeting held, as set out in section 10.9.

**9.17 Formal process - Stage 4**

**If your attendance does not improve sufficiently following Stage 3, we will progress to the next stages of the procedure. At the conclusion of Stage 4 of the procedure it is possible that you will be dismissed from the ICO.**

Your manager should write to you to confirm that a Stage 4 meeting will take place. A sample letter can be found at Appendix 9.

9.18 If are dismissed at the conclusion of this procedure you will be sent a letter to confirm your dismissal and the reason why you were dismissed. A sample letter can be found at Appendix 10. A copy of this letter will be sent to HR.

9.19 If you are not dismissed you may be given a period to demonstrate improvement in your attendance. If you have reached the required standard of attendance at the end of the period allowed for improvement, your line manager will inform you, in writing, that no further action will be taken.

## 10. Deciding on the outcome of formal action

10.1 In Stage 1 of the formal process your line manager will determine whether or not to issue a verbal warning. Meetings at this stage will comprise of you, your line manager and, if appropriate, a member of the HR Team and your TU representative or ICO colleague. Where a member of the HR Team is not involved in the meeting, managers should consult with HR before making a decision to ensure fairness and consistency across the organisation.

10.2 Meetings taking place at Stages 2 and 3 will be chaired by a manager more senior to your line manager wherever practical. Meetings at Stage 4 of the procedure will be conducted by a manager at Assistant Commissioner level or above. Meetings will be conducted in accordance with the procedure in Appendix 1 and, as well as you, they will be attended by:

i. the Chair of the meeting
ii. your line Manager
iii. a member of HR team (to advise the Chair); and
iv. a trade union representative or an ICO colleague (if you wish).

10.3 General considerations

The Chair will decide whether to take formal action after listening to all the information presented during the formal meeting. The Chair will, however, need to consider the following points.

i. Your absence record.

ii. The fairness, consistency and merits of the information presented during the hearing.

iii. The efforts you have made to improve your attendance.

iv. The extent to which you may have contributed to the situation, such as by not attending occupational health appointments.

v. The requirements of employment legislation which state that we, as your employer, act reasonably and treat each case fairly and on its own merits.

vi. The status of warning that you are under at the current time.

**Any warnings issued under the ICO's Disciplinary procedure are not relevant or applicable to this 'Managing absence' procedure.**

10.4 **First written warning (Stage 2)**

If, following Stage 1 of the process, your attendance has not improved sufficiently, you may be given a first written warning.

This first written warning informs you that your absence record is viewed as a serious matter and one that you and your line manager must address together.

You will be informed, in writing, of:

i. the reason for the warning;

ii. the details of the review period;

iii. the standard of attendance expected from you;

iv. the consequences of you failing to meet specified improvements; and

v. your right of appeal.

1.3 You will also be advised that the warning will remain in force for up to 12 months.

1.4 Your line manager can, at any point, refer the matter to a further formal meeting if you are not making sufficient progress. If you have reached the appropriate standard by the end of the review period, your line manager will inform you, in writing, that no further action will be taken.

10.7 **Final written warning (Stage 3)**

If you have already had a first written warning and your attendance has not improved sufficiently, you may be given a final written warning.

10.8 A final written warning notifies you that if your attendance does not improve to an acceptable standard within the specified time limit, you will be invited to a further meeting at which we will consider whether to terminate your contract of employment with the ICO.

You will be informed, in writing, of:

i. the reason for the warning;

ii. the details of the review period;

iii. the standard of attendance expected from you;

iv. the consequences of you failing to meet specified improvements, which may be the termination of your contract of employment; and

v. your right of appeal.

10.9 **Dismissal (Stage 4)**

If you have already been given a final written warning and your attendance has not improved, despite encouragement and assistance from your line manager, a further formal meeting will be held.

We could decide at this meeting to terminate your contract of employment on the grounds of incapability.

If we decide to dismiss you, you will be informed, in writing, of:

i. the reason for the decision;

ii. the period of notice that you are entitled to;

iii. the date from which your dismissal is effective;

iv. arrangements for your final pay and any outstanding annual leave; and

v. your right of appeal.

## 11. Right of appeal

11.1 **First / final written warning**: If you want to appeal against a first / final written warning you must do so in writing. This must be sent to the Chair who heard the case within 10 working days of you receiving the letter confirming your first / final written warning. Where possible, we will hear the appeal within 15 working days of receiving your request. Where possible the appeal will be heard by a manager more senior than the original Chair.

11.2 **Dismissal:** If you want to appeal against dismissal you must do so in writing to the Director of Human Resources within 10 working days of receiving the letter confirming your dismissal.

The Director of Human Resources will then set up an appeal panel which will include a member of the Executive Team and an appropriate HR representative.

As far as possible, your appeal will be heard within 30 days of receiving your request.

11.3 We will deal with all appeals internally and, after such an appeal, you will have no further right of internal appeal. However, you have the right to apply to an employment tribunal.

## 12. Dealing with long-term sickness absence

12.1 If you are absent on long-term sickness absence (in other words, more than 15 working days or a pro-rated equivalent for part time staff), the following procedure will make sure that appropriate action is taken.

12.2 While you are on long-term sickness absence, your line manager should contact you every two weeks and you must stay in regular contact with your manager. This approach will help both of you. You will be able to raise any particular concerns with your manager and, in turn, your manager will know how long you expect to be absent.

12.3 The payroll provider will notify HR if your salary is about to reduce from full to half pay and if your entitlement to sick pay is about to run out. HR will then inform you and your manager when your salary is at risk.

12.4 Before taking any action about your employment, your line manager must establish the current medical opinion on your state of health. You will be told that you are being referred to Occupational Health and they will

request, where necessary, a medical report from your GP and/or consultant in the first instance.

12.5 We will ask you to consent to us requesting a medical report from the Occupational Health Service. In addition, the Occupational Health Service will inform you of your rights under the Access to Medical Reports Act 1988.

12.6 If you refuse to co-operate, either to provide medical evidence or to submit to an independent medical examination, we will base our decision on the information we have available and this may result in your dismissal or affect your pay.

12.7 Having received medical evidence, or in the absence of such evidence if you have refused to co-operate, we will arrange a formal meeting with you, as set out in section 9, to discuss your health and absence from work. The meeting will either be held at work, your home or another suitable venue, whichever is most convenient for you.

12.8 If, according to medical opinion, you are likely to return to work in the foreseeable future, your line manager will discuss the following issues with you at the formal meeting.

i. How best to arrange your return to work; for example, a gradual return (perhaps three days a week to start), bearing in mind the needs of the ICO to provide a service.

ii. Whether it would be feasible to make temporary adjustments to your current job, such as altering your hours or days of work, redistributing your duties and, if appropriate, making adjustments to your physical work environment (such as an adjustable chair or raising your desk).

12.9 If, according to medical opinion, it is unlikely that you will be able to return to work or to your normal duties in the foreseeable future, we will discuss the following options with you.

i. Making permanent adjustments to your current job, such as altering hours or days of work, redistributing your duties and, if appropriate, making adjustments to your physical work environment.

ii. The possibility of redeploying you to another appropriate post within the ICO on the same salary/wage and terms and conditions as your current post, if this is possible. We will make every reasonable effort to find you alternative employment.

12.10 If we cannot keep your job open any longer and, after taking medical advice, we cannot make any reasonable adjustments or find any suitable alternative work for you, we will inform you of the likelihood that you will be dismissed on the grounds of incapability.

12.11 We only consider dismissing an employee on the grounds of incapability due to ill health when we have considered all the available facts and medical reports and investigated the following factors.

i. Current medical opinion shows that you are not able to return to your current post in the foreseeable future.

ii. It has not been possible for us to make any reasonable adjustments to your existing post.

iii. Your medical condition prevents you from being redeployed to another job within the ICO.

iv. You have refused to consider or accept suitable alternative employment within the ICO, where available.

12.12 If we decide to dismiss you, the normal conditions for us giving you notice will apply even though, in practice, you may not be able to work your notice. In these circumstances, you should either receive full pay throughout the notice period, or be paid in lieu of notice. We may dismiss you at any time, as long as we have evidence of your incapability as outlined above. The decision to dismiss you will be confirmed in writing.

12.13 You have the right to appeal against a decision to dismiss you on the grounds of incapability. Any appeal must be made in writing to the Director of Human Resources within 10 working days of receiving the dismissal letter.

12.14 Independent of and separate to the decision to dismiss you, we can explore options for you to retire on the grounds of ill health under the rules of the Principal Civil Service Pension Scheme (PCSPS), if you are eligible to do so.

## 13. Retirement on the grounds of ill health

13.1 Under their normal arrangements for these matters, the administrators of the PCSPS will consider our Occupational Health Service advisor's recommendation that you should be considered as permanently unfit for work.

13.2 If the PCSPS's medical consultant decides that you are incapable of performing the duties and/or responsibilities of your post due to permanent ill health, we will arrange a home visit or a meeting at some other mutually agreed location so that we can explain their decision to you.

13.3 The PCSPS medical advisor may decide that you are permanently unfit to carry out your normal duties, but they may recommend that we look for suitable alternative employment opportunities for you. In this case, we will make every effort to redeploy you within the ICO, even if the work is not at the same level as your current salary. The Disability Discrimination Act 1995 states that employers must make reasonable adjustments wherever possible. If we do not have any suitable alternative employment available, you may be eligible to retire on the grounds of ill health.

13.4 If medical retirement is recommended, we will write to you to arrange a meeting to confirm the decision, and advise you of your right to be accompanied at the meeting.

13.5 At this meeting, we will explain that we are serving you with a notice to terminate your employment on the grounds of ill health retirement. You will have the opportunity to respond and you will also have the right to appeal against the decision. We will confirm our decision in writing.

13.6 Any appeal against a dismissal on the grounds of ill health retirement must be sent to the Director of Human Resources within 10 working days of receiving written confirmation of the decision.

## 14. Date of operation

This procedure has been agreed with TU representatives and adopted by the ICO Executive Team with effect from 27 March 2008.

We will review the procedure periodically and update it in line with changes in employment legislation or significant developments in employment law practice.

**Appendix 1**

## Managing sickness absence policy and procedure

### Procedure for managing meetings at Stages 2, 3 and 4

### 1. Preparation for a meeting

If the Stage 1 warning has not led to an improvement in your attendance, we will have to follow the formal stages of this procedure.

1.1 We will write to you at least 5 working days before the date set for the formal meeting to discuss the issue of your absence record (unless otherwise mutually agreed). The letter should contain any supporting information relating to the attendance issue, such as dates of your absences and a record of any previous meetings.

1.2 The letter will also give details of the managers who will be present at the meeting. This will normally be your line manager with the next level of manager in the role of Chair, along with a member of the Human Resources Team. Meetings at Stage 4 will be chaired by a manager at Assistant Commissioner level or above.

1.3 The letter will also inform you that you have the right to be accompanied at the meeting by your trade union representative or ICO colleague.

1.4 The letter will also inform you that, after due consideration of all the facts and circumstances, we may take formal action against you. If the hearing is a Stage 4 meeting, the letter must confirm that dismissal is a possible outcome of the hearing.

### 2. Arranging formal meetings

2.1 To avoid having to postpone meetings at the last minute a mutually convenient time and date should be agreed with you and your TU representative or colleague for the formal meeting, in line with the time limits set out in this procedure.

2.2 If there is a possibility that the hearing may result in dismissal, for instance if you already have a final written warning, a manager at Assistant Commissioner level or above must chair the formal meeting.

2.3 If your TU representative or colleague cannot attend on the date proposed, you can suggest an alternative time and date for the meeting, as long as it is within 5 working days of the date initially proposed. If you suggest an alternative date, you should consider the availability of the

other people required to attend. For instance, it would not be reasonable to propose a new date for the meeting when you know that your manager is going to be out of the office.

## 3. Conduct of formal meetings

3.1 Normally, formal meetings will be conducted in line with the procedure outlined below. In certain situations, however, such as if you are suffering from long-term ill health, it may not be appropriate to adopt such a formal process. In such cases, your line manager will agree changes to the approach with HR before the meeting. After discussion with the HR representative and your representative, your line manager can use their discretion to adapt the following procedure as appropriate.

Guidance for the Chair on the process of conducting meetings (and specifically Stage 4 meetings) can be found at Appendix 10 of the managing absence procedure.

3.2 **Introductions:** Together with a representative from Human Resources, the manager hearing the case (the Chair) will introduce everyone present, explain the purpose of the meeting and explain how the meeting will be conducted.

3.3 **Statement of concern:** The Chair should explain precisely what the concern is and invite your line manager to present their findings from the investigation process, including all previously circulated statements and/or written material gathered during the investigation.

3.4 **Employee's right to reply:** You will be given the opportunity to state your case.

3.5 **Civility:** The meeting should be conducted politely and fairly, with the emphasis being on establishing the facts, so all parties should be free to ask questions politely and comment as appropriate.

3.6 **Summing up:** After general questioning and discussion, both parties should be given the opportunity to summarise their main points, and you will have the right to go last.

3.7 **Adjournment:** The Chair will consider the decision in private along with the HR Representative who will provide advice. If it is necessary to recall one or other of the parties to clear up any points of uncertainty on evidence already given, both parties will be invited to return.

3.8 **The decision:** Everyone involved will be recalled and the Chair will inform them of his or her decision.

# Self-certification and return to work meeting form

This form must be used in connection with absence due to a sickness lasting fewer than 8 calendar days. Please note that if sickness exceeds 7 calendar days, a medical certificate from your doctor must be submitted. Details of the return to work meeting must also be recorded on this form.

| **Employee's name:** | |
|---|---|
| **Line manager's name:** | **Department:** |

**Part 1 – Self-certification**

| **Period of incapacity** | |
|---|---|
| First day I was unfit for work<br>(if this was a day when you were not normally expected to attend work) | |
| First day I missed work or left early<br>(please state time you left if you came into work that day) | |
| First day I was well enough to return to work<br>(if this was a day when you were not normally expected to attend work) | |
| First day I actually returned to work<br>(please state time you returned to work if you came in during the day) | |
| Number of working days absent<br>(if you are part time, please state the number of your normal working days you were absent) | |

| **Nature of incapacity**<br>State the name of your illness and/or briefly describe the main symptoms |
|---|
| |
| Give the name of any medication and describe any treatment you took |
| |

| **Medical certification** |
|---|
| Was a doctor's note required for the period of absence?<br>(If 'no' move to the next section of the form. A doctor's note is required for absences that are longer than 7 calendar days.)<br><br>Have you provided a doctor's note(s)?<br><br>Is all of the absence after the first 7 calendar days covered by doctor's notes?<br>(N.B You may need to return to your GP to get a 'special' certificate if there are gaps in the periods covered by sick notes.)<br><br>If required, have you had a 'signing off' note?<br>(If your absence is covered by GP notes for longer than one week, you will need a note to confirm that you are fit to return to work.) |

**Part 2 – Return to work meeting**

| **Welcome back**<br>How is the person feeling? |
|---|
| |
| **Adjustments**<br>What, if any, temporary or permanent work place adjustments are needed? |
| |

| **Absence in last 12 months (prior to this occasion of absence)** | |
|---|---|
| No. of days of absence in last 12 months: | |
| No. of occasions of absence in last 12 months: | No. of occasions of absence in last 6 months: |

**Note for line managers**
You should explain to the employee that their future absences will be monitored and reviewed at regular intervals.

If sickness triggers are met, inform the employee that they will have to attend a separate stage 1 / 2 / 3 / 4 absence interview, at which they can be accompanied by a trade union representative or work colleague if they wish.

| **Additional notes** |
|---|
| |

**I certify that I have been absent from work for the period stated due to the incapacity indicated. To the best of my knowledge and belief, these facts are correct. I understand that further enquiries may be made at the discretion of management.**

| | | | |
|---|---|---|---|
| **Employee's signature** | | **Date** | |

| | | | |
|---|---|---|---|
| **Line Manager's signature** | | **Date** | |

**When signed by both employee and line manager this form must be sent to the Human Resources Department.**

**FOR HUMAN RESOURCES USE ONLY**

| | | | | | |
|---|---|---|---|---|---|
| **Days of Sickness** | | **Medical Certificate** | **Required Yes/No**<br>**Supplied Yes/No** | **Entered on to CIPHR** | |

## Appendix 3

Sample letter inviting employee to Stage 1 absence interview
This letter should be hand delivered or emailed if the employee is in work

Dear **NAME**

**Stage 1 - Absence interview**

I am writing to inform you that you are required to attend an interview on **DATE** at **TIME**, which will be held at **VENUE.**

We will discuss your sickness record at this interview as you have hit the trigger points as set out in the ICO's 'Managing absence' procedure. I have attached details of the periods of your sickness absence that we will be discussing during the interview.

You may, at the conclusion of the meeting, be issued with a verbal warning.

At the interview you may be accompanied by either a trade union representative or an ICO work colleague.

Yours sincerely

**NAME OF LINE MANAGER**
**JOB TITLE LINE MANAGER**

Enc

## Appendix 4

Sample letter confirming a Stage 1 warning
This letters should be hand delivered or posted to the employee's home
(N.B this letter should not be emailed to the employee)

Dear **NAME**

**Stage 1 - Verbal warning**

I refer to the recent Stage 1 absence interview that you attended with me on **DATE** at which **[TU REP/COLLEAGUE'S NAME** accompanied you **OR** at which you chose not to be accompanied.**]**

At this meeting we discussed your sickness record over the past 12 months. I explained to you the importance of your attendance at work and that your recent level of sickness absence was unsatisfactory.

I informed you that you needed to significantly improve your attendance and that your attendance record would now be closely monitored over the next 12 months. I also issued you with a verbal warning with regard to your attendance.

I also warned you that if there was no improvement in your attendance, we would consider taking further action against you in line with our 'Managing absence' procedure.

Yours sincerely

**NAME OF LINE MANAGER**
**JOB TITLE LINE MANAGER**

cc. Human Resources

## Appendix 5

Sample letter inviting employee to Stage 2 absence interview
This letter should be hand delivered or emailed if the employee is in work

Dear **NAME**

**Stage 2 - Absence interview**

I am writing to inform you that you are required to attend an interview on DATE at TIME, which will be held at VENUE.

The meeting will be chaired by CHAIR'S NAME and we will discuss your sickness record at this interview. Following your Stage 1 interview held on DATE, at which you were given a verbal warning, this meeting will determine whether any further action under the ICO's 'Managing absence' procedure is appropriate.

You may, at the conclusion of this interview, be issued with a first written warning.

I have attached details of the periods of your sickness absence that we will be discussing during the interview.

You may be accompanied at this interview by a trade union representative or an ICO work colleague.

Yours sincerely

**LINE MANAGER'S NAME**
**LINE MANAGER'S JOB TITLE**

Enc.

## Appendix 6

Sample letter confirming a Stage 2 warning
This letters should be hand delivered or posted to the employee's home
(N.B this letter should not be emailed to the employee)

Dear **NAME**

**Stage 2 - First written warning**

I refer to the recent Stage 2 absence interview that you attended with me on **DATE** at which **[TU REP/COLLEAGUE'S NAME** accompanied you **OR** at which you chose not to be accompanied**]**.

At this meeting we discussed the following issues **PROVIDE SUMMARY OF ISSUES**

At the meeting I explained to you the importance of your attendance at work and that your recent level of sickness absence was unsatisfactory. I also informed you that we needed to see a significant improvement in your attendance.

Having considered the available information, comments from your manager at the absence interview and the responses from you **[**and your representative**]**, I am issuing you with a first written warning. This will remain on your file for 12 months. In addition, your absence record will be closely monitored over the next 12 months.

I also warned you that if there was insufficient improvement in your attendance, we would move to Stage 3 of the procedure for managing absence, which could involve taking further formal action against you in line with that procedure.

You may appeal against my decision. If you wish to appeal, you must do so in writing to me within 10 working days of receiving this written confirmation of your first written warning.

Yours sincerely

**NAME OF STAGE 2 CHAIR**
**JOB TITLE**

cc. Human Resources

## Appendix 7

Sample letter inviting employee to Stage 3 absence interview
This letter should be hand delivered or emailed if the employee is in work

Dear **NAME**

**Stage 3 - Absence interview**

I am writing to inform you that you are required to attend an interview on **DATE** at **TIME** which will be held at **VENUE.**

The meeting will be chaired by **CHAIR'S NAME**, and we will discuss your sickness record at this interview.

Following your Stage 2 interview held on **DATE,** at which you were given a first written warning, this meeting will determine whether any further action under the ICO's 'Managing absence' procedure is appropriate.

You may, at the conclusion of this interview, be issued with a final written warning.

At this interview we will discuss your sickness record following our last stage 2 interview, to determine whether further action is required under our procedure for managing absence. I have attached details of the periods of your sickness absence that we will be discussing during the interview.

You may be accompanied at this interview by a trade union representative or an ICO work colleague.

Yours sincerely

**LINE MANAGER'S NAME**
**LINE MANAGER'S JOB TITLE**

Enc

## Appendix 8

Sample letter confirming a Stage 3 final written warning
This letters should be hand delivered or posted to the employee's home
(N.B this letter should not be emailed to the employee)

Dear **NAME**

**Stage 3 - Final written warning**

I refer to the recent Stage 3 absence interview that you attended with me on **DATE**, at which **[**you were accompanied by **TU REP/COLLEAGUE'S NAME** or you chose not to be accompanied**]**.

At this meeting we discussed the following issues: **PROVIDE SUMMARY OF ISSUES**

At the time I explained to you the importance of your attendance at work and that your recent level of sickness absence was unsatisfactory. I also stressed to you that we needed to see a significant improvement in your attendance immediately.

Having considered the available information, comments from your manager at the absence interview and the responses from you **[**and your representative**]**, I am issuing you with a final written warning. This will warning will remain 'live' on your file for 12 months. In addition, your absence record will be closely monitored over the next 12 months.

I also warned you that if there was insufficient improvement in your attendance, we would move to Stage 4 of the procedure for managing absence, which could involve taking further formal action against you in line with that procedure.

You may appeal against my decision. If you wish to appeal, you must do so in writing to me within 10 working days of receiving this written confirmation of your final written warning.

Yours sincerely

**NAME OF STAGE 3 CHAIRPERSON**
**JOB TITLE**

cc. Human Resources

## Appendix 9

Sample letter inviting employee to Stage 4 absence interview
This letter should be hand delivered or emailed if the employee is in work

Dear **NAME**

**Stage 4 – Absence interview**

I am writing to inform you that you are required to attend a Stage 4 meeting on **DATE** at **TIME**, which will be held at **VENUE**.

The meeting will be chaired by **CHAIR'S NAME** and we will discuss your sickness record at this interview.

Following your Stage 3 interview held on **DATE,** at which you were given a final written warning, this meeting will determine whether any further action under the ICO's 'Managing absence' procedure is appropriate.

It is important that you note that you may be dismissed at the conclusion of this interview.

You may be accompanied at this interview by a trade union representative or an ICO work colleague.

Yours sincerely

**LINE MANAGER'S NAME**
**LINE MANAGER'S JOB TITLE**

Enc

## Appendix 10

Sample letter confirming dismissal
This letters should be hand delivered or posted to the employee's home
(N.B this letter should not be emailed to the employee)

Dear **NAME**

**Stage 4 - Dismissal**

I refer to the recent Stage 4 absence interview that you attended with me on **DATE**, at which **[**you were accompanied by **TU REP/COLLEAGUE'S NAME** or you chose not to be accompanied**]**.

At this meeting we discussed the following issues **PROVIDE SUMMARY OF ISSUES**

Having considered the available information, comments from your manager at the absence interview and the responses from you **[**and your representative**]**, I have decided that it is appropriate to dismiss you on the grounds of incapability.

Under your contract of employment you are entitled to **PERIOD** notice from the ICO to the terminate of your contract. A payment for the appropriate period of time will be made to you via payroll in the near future.

You may appeal against my decision. If you wish to appeal, you must do so in writing to The Director of Human Resources within 10 working days of receiving this written confirmation of your final written warning.

Yours sincerely

**NAME OF STAGE 2 CHAIRPERSON**
**JOB TITLE**

cc. Human Resources

**Appendix 11**

## Procedure to be followed by the Chair at Stage 2, 3 or 4 hearings

1. Begin by introducing everyone present and explaining their role.

2. Explain to the employee that the purpose of the hearing is to consider their level of sickness absence and, having heard all the facts, to consider whether to take further action under the ICO's 'Managing sickness absence' procedure.

3. If the employee is not represented, remind them of their right to be represented and, if necessary, offer an adjournment for them to make appropriate arrangements.

4. Explain how the hearing will be conducted.

   a) The line manager will list the facts, including the background to the case and any action we have taken so far (such as previous warnings issued, the levels and details of any absences to be considered in this hearing, any medical information obtained and any other relevant information).

   b) The employee and/or their representative will have the opportunity to ask questions.

   c) The employee or their representative will respond to the above.

   d) The line manager will have the opportunity to ask questions and comment on responses given by the employee or their representative.

   e) The Chair and/or the HR representative can ask questions at any stage.

5. When steps 4a - 4e are completed ask both parties to leave the room while you, as Chair, and the HR representative consider the matters raised. These matters include:

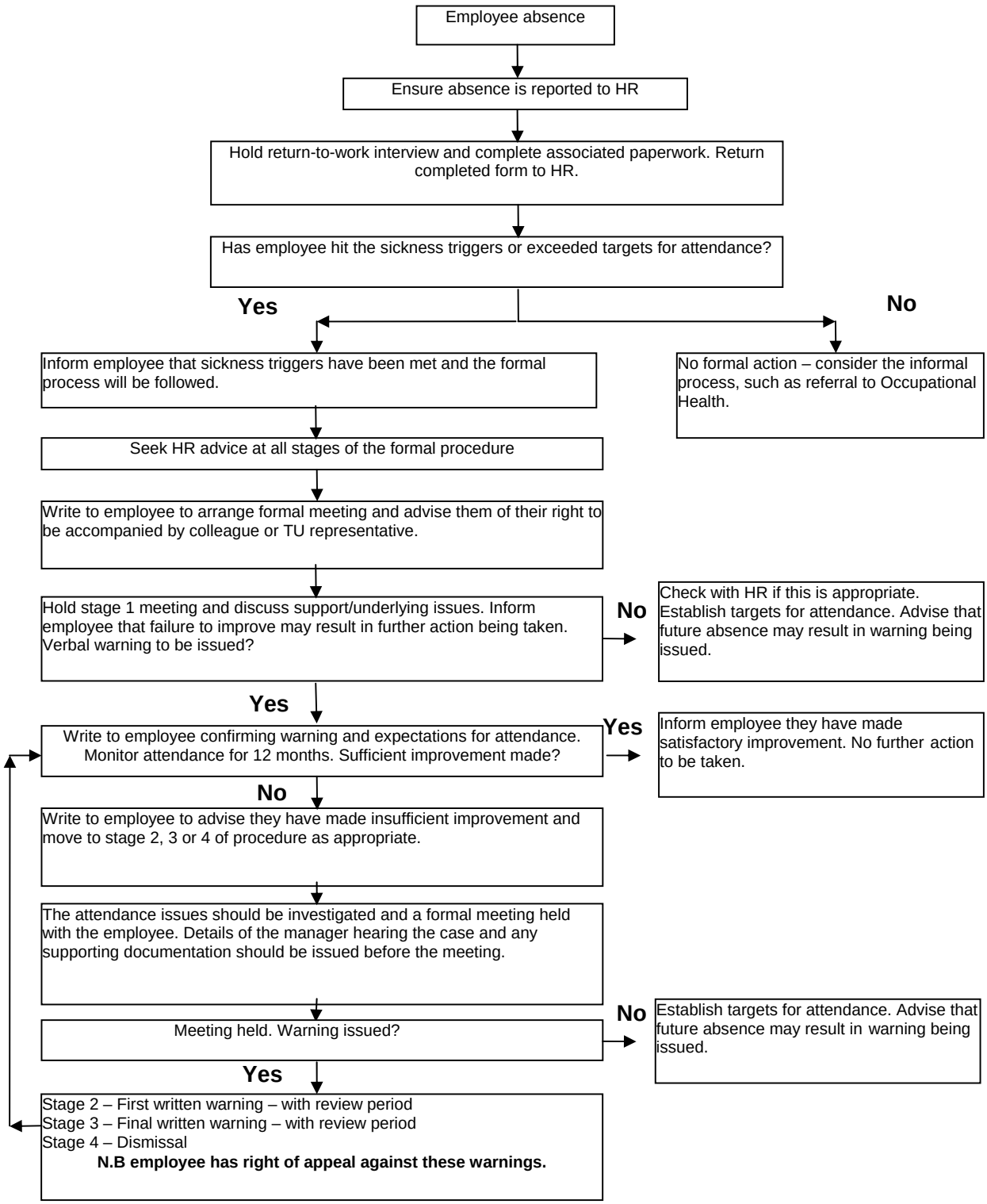
   - whether the procedure for managing absence has been followed;
   - the levels and reasons for the employee's sickness absences;
   - any matters or explanations put forward by the employee or their representative;
   - any action we have taken to improve the employee's level of attendance;
   - any medical evidence we have received; and
   - whether the employee is aware that their continuing level of absence may lead to a more serious warning or their dismissal.

6. Ask both parties to come back and inform the employee of the action you are going to take. This action could include:
   - taking no further formal action (the current existing absence warning will remain in force and we will continue to monitor the employee's absence);
   - issuing the appropriate level warning - eg first written or final written warning; or
   - dismissal.

   Inform the employee of their right of appeal and that you will confirm the details of the outcome of the hearing in writing.

**Appendix 12**

**Dealing with short-term absence**


Employee absence
Ensure absence is reported to HR
Hold return-to-work interview and complete associated paperwork. Return completed form to HR.
Has employee hit the sickness triggers or exceeded targets for attendance?
Yes
No
Inform employee that sickness triggers have been met and the formal process will be followed.
No formal action – consider the informal process, such as referral to Occupational Health.
Seek HR advice at all stages of the formal procedure
Write to employee to arrange formal meeting and advise them of their right to be accompanied by colleague or TU representative.
Hold stage 1 meeting and discuss support/underlying issues. Inform employee that failure to improve may result in further action being taken. Verbal warning to be issued?
No
Check with HR if this is appropriate. Establish targets for attendance. Advise that future absence may result in warning being issued.
Yes
Write to employee confirming warning and expectations for attendance. Monitor attendance for 12 months. Sufficient improvement made?
Yes
Inform employee they have made satisfactory improvement. No further action to be taken.
No
Write to employee to advise they have made insufficient improvement and move to stage 2, 3 or 4 of procedure as appropriate.
The attendance issues should be investigated and a formal meeting held with the employee. Details of the manager hearing the case and any supporting documentation should be issued before the meeting.
Meeting held. Warning issued?
No
Establish targets for attendance. Advise that future absence may result in warning being issued.
Yes
Stage 2 – First written warning – with review period
Stage 3 – Final written warning – with review period
Stage 4 – Dismissal
N.B employee has right of appeal against these warnings.